

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EXPORT PACIFIC GRAIN COMPANY,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 159 and 164

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

These matters, the appeals of nine civil penalties of \$250.00 each (a total of \$2,250.00) for alleged violations of respondent's air contaminant emission regulations, came before two members of the Pollution Control Hearings Board (James T. Sheehy and Walt Woodward) at a consolidated formal hearing in the Tacoma law offices of Burkey, Marsico, Roval & McGoffin at 9:30 a.m., January 31, 1973.

Appellant appeared through its attorney, Edward M. Lane, respondent through its counsel, Keith D. McGoffin. Eugene Barker, Tacoma court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted. Counsel made closing arguments.

3 On the basis of testimony and arguments heard, exhibits examined,
4 the Pollution Control Hearings Board prepared Proposed Findings of
5 Fact, Conclusions and Order which were submitted to the appellant and
6 respondent on March 14, 1973. No objections or exceptions to the
7 Proposed Findings, Conclusions and Order having been received, the
8 Pollution Control Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 The Sperry grain elevator, built in 1914 at 711 Bayside Drive,
12 Tacoma, Pierce County, was acquired by appellant, the operator of
13 other grain terminals on the Columbia River, in 1968 when there was a
14 need for grain storage space due to a maritime labor dispute. Appellant
15 accepted grain from the United States Commodity Credit Corporation.
16 Shortly thereafter, the City of Tacoma notified appellant that the
17 elevator property was needed as part of a right-of-way for a
18 contemplated Bay Freeway.

19 II.

20 As the result of a grain export arrangement made by the United
21 States with Russia, appellant was ordered in late June of 1972 to make
22 immediate arrangements for removal of the stored grain to railroad cars.
23 Compounding the sudden notice was the coincidental loss to appellant, by
24 death and critical illness, of two key supervisory employees who were
25 trained and experienced in handling the old elevator's complex dust
26 collection system.

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1 III.

2 In the late afternoon of July 5, 1972 an inspector on
3 respondent's staff observed grain dust of an opacity greater than
4 60 percent being emitted for 15 minutes from the railroad car loading
5 facility at subject grain elevator. He issued a Notice of Violation
6 of Section 9.03(a) of respondent's Regulation I against appellant and
7 subsequently, appellant was served with Notice of Civil Penalty No. 324
8 in the amount of \$250.00.

9 IV.

10 Similar dust emission readings and Notices of Violation were made
11 by two other inspectors on respondent's staff at the subject grain
12 elevator on July 11, 13, 14, 17, 18, 19 (twice) and 20, 1972. In
13 connection with these citations, Notices of Civil Penalty Nos. 325,
14 326, 341, 342, 343, 360, 361 and 359, each in the amount of \$250.00,
15 were issued against appellant. These penalties, plus the one noted
16 in Findings of Fact III are the subjects of this appeal.

17 V.

18 Section 9.03(a) of respondent's Regulation I makes it unlawful to
19 cause or allow emission of an air contaminant more than three minutes
20 in any one hour which is greater in opacity than 40 percent. Section
21 1.07(b) of respondent's Regulation I includes "dust" in its definition
22 of "air contaminant". Section 3.29 of respondent's Regulation I
23 authorizes the assessment of a civil penalty of not more than \$250.00
24 for each violation of respondent's Regulation I.

25 VI.

26 After receiving the July 5, 1972 Notice of Violation, appellant
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1 tried several methods of controlling and containing the dust. None of
2 them succeeded. After receiving the July 20, 1972 Notice of Civil
3 Penalty, appellant ceased its car loading operation and notified the
4 Commodity Credit Corporation it could deliver no more grain until it
5 was in compliance with respondent's air contaminant regulations. Later,
6 appellant sought and obtained a variance from respondent, a term of
7 which involved the construction of a device which hooded the car
8 receiving grain. In December, 1972, appellant resumed car loading
9 under terms of the variance and, except for one Notice of Violation
10 issued when the hood was in a state of disrepair, grain loading of
11 railroad cars has proceeded without further citations from respondent.

12 From these Findings of Fact, the Pollution Control Hearings Board
13 comes to these

14 CONCLUSIONS

15 I.

16 Appellant was in violation of Section 9.03(a) of respondent's
17 Regulation I on July 5, 11, 13, 14, 17, 18, 19 (twice) and 20, 1972.

18 II.

19 In view of the continuing and, at times, daily violations,
20 respondent's levy of the maximum allowable civil penalties is
21 reasonable.

22 III.

23 But compliance has been achieved. The objective of Regulation I--
24 in this instance, cleaner air over Tacoma--is closer to realization
25 because appellant, albeit not until it received its ninth, consecutive
26 Notice of Violation, finally took enough time and spent enough money to

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1 attain reasonable compliance with respondent's clean air regulations.
2 The persistent service of those Notices of Violations, coupled with
3 respondent's prosecution of the accompanying civil penalties, have
4 achieved their purpose. If the nine civil penalties here at issue have
5 proven useful tools, what now remains to be done with them, particularly
6 in view of the fact that the grain now being unloaded probably will be
7 the last to be stored in this old elevator on the right-of-way of a
8 proposed freeway? The Board feels the appropriate answer in this
9 particular matter is to require the payment of a civil penalty which
10 will recognize the validity of respondent's work and yet not be
11 unnecessarily punitive to an accused firm which now is in compliance.

2 THEREFORE, the Pollution Control Hearings Board comes to this

13 ORDER

14 The appeals to the instant nine civil penalties are denied and
15 appellant is directed to pay to respondent \$250.00 for one of the
16 penalties and \$1.00 each for the other eight--a total payment of
17 \$258.00.

18 DONE at Olympia, Washington this 24th day of April, 1973.

19 POLLUTION CONTROL HEARINGS BOARD

20 Walt Woodward
21 WALT WOODWARD, Chairman

22
23 W. A. GISSBERG, Member

24 James T. Sheehy
25 JAMES T. SHEEHY, Member

26 Mr. W. A. Gissberg, the other member of this Board, not having
27 participated in the hearing on this matter has declined to sign this
Order.

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